SUPREME COURT, U.S.

FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1397

PATRICIA DROWN,

Petitioner,

V.

PORTSMOUTH SCHOOL DISTRICT, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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STATEMENT

This case involves an action brought by a teacher in Supervisory Union No. 52 against that Union's School Board, its Superintendent and Assistant Superintendent under the provisions of a Federal Civil Rights Act (Civil Rights Act of 1871, 42 U.S.C. 1983).

The petitioner first entered into a one year contract to teach in the 1968-1969 school year. A second one year contract was entered into for the 1969-1970 school year.

Prior to March 15, 1970 the petitioner was notified by the office of the Superintendent that she would not be nominated by him to the School Board for election to a third one-year contract.

Petitioner requested of the office of the Superintendent a hearing by the School Board and "the causes of this refusal" of

her contract. The School Board denied this request for a hearing and did not provide her with any list of causes.

Petitioner filed a complaint in the U. S. District Court for New Hampshire asserting that her services as a teacher could not be terminated (even though she only had an annual contract) and that by not being renominated, afforded a hearing and given the reasons for non-retention the action of the Board was arbitrary and capricious and therefore violative of her "due process rights". She did not assert that her failure to be renominated was the result of her exercise of free speech, discrimination because of her race, color, creed, sex or place of national origin.

Respondents filed a motion before the District Court praying that the action be dismissed because the complaint failed to state a claim against the respondents upon which relief could be granted. Teacher contracts are governed by New Hampshire law - statutory law. A teacher who has taught for less than three years is not considered to be "tenured". Tenured teachers may not have contract non-renewal without the right to a requested hearing and further appeal to the State Board of Education.

Defendants' motion to dismiss (filed pursuant to F. R. Civ. P. 12) asked to dismiss the action because the City of Portsmouth does not operate a system of public schools within the City and further that the Superintendent, his assistant and the School Board members have no individual or official capacity with the municipal corporation of the said City of Portsmouth. This motion was filed April 28, 1970. The Marshal's return of service was filed with the District Court on April 17, 1970.

On May 21, 1970, Petitioner filed with the District Court a Motion for Summary Judgement with Affidavit. This Motion and Affidavit having been purportedly filed pursuant to Rule 56 of the Federal Rules of Civil Procedure. On April 29, 1970, the District Court notified the parties that the defendants motion to dismiss would be heard on May 27, 1970, this being prior to the allowed time to respond to the Motion for Summary Judgment and Affidavit.

On May 27, 1970, but yet subsequent to the 1:30 P.M. hearing on the Motion to Dismiss of Respondents, the Petitioner filed a motion to amend seeking to substitute Portsmouth School District as a party Defendant instead of the City of Portsmouth.

On June 2, 1970, the District Court granted the Petitioner's

motion to amend, denied petitioner's motion for summary judgement, and granted the Respondents motion to dismiss on the grounds that the complaint failed to state a cause of action under 42 U.S.C. 1983. On June 22, 1970, Petitioners filed an appeal with the U. S. Circuit Court of Appeals from the order granting the motion to dismiss.

On December 18, 1970, the U. S. Court of Appeals for the First Circuit vacated the decision of the District Court and remanded the cause for further proceedings consistent with the opinion of the Court. The Court had ruled that there could be no damages, that the teacher was not entitled to a hearing but that the teacher was entitled to be given reasons and access to evaluation reports in the teachers personnel file. *(Drown v. Portsmouth School Dist.*, 1st Cir. 1970, No. 7667).

The allegations and statements of Petitioner as to her teaching, attitude, proficiency, etc. are only non-evidentiary self-serving declarations which have not yet gotten to court.

REASONS FOR NOT GRANTING THE WRIT

The issue in the present case is sufficiently clear and has been pronounced upon in other cases where this Court has over the recent years denied certiorari from cases in several of the Circuits. To do as Petitioner suggests would open a Pandora's box which courts ought not to do.

As the First Circuit Court of Appeals stated: "... While it is true that the effect of a decision not to rehire may be the same as a dismissal, the teachers have made a contract which entitles them to procedural rights only when they are dismissed. Teachers are not powerless to change the terms of their contracts; the procedural rights of non-tenured teachers who are not rehired vary widely from state to state. See Developments in the Law - Academic Freedom, Supra at 1091-92. Non-tenured teachers who do not like the terms of New Hampshire contracts can either bargain to change them or can seek employment in states where the terms are different. Thus, in balancing the interests of the school board and the teacher, we must remember that the teachers have agreed to the procedural scheme and that teachers are not powerless to alter the scheme or find employment under a different scheme."

In *Beatie v. Roberts*, — F.2d—. (1st Cir. Jan. 6, 1971) the Court buttressed this position with a contention that it would

be beyond the power of the Court and a trespass into legislative territory. At pp. 7 & 8 that Court said, "If we required the state or municipalities to create neutral bodies to which the Committee's (School Board's) decision to dismiss could be appealed, we would be engrafting into educational administration an appellate layer of enormous complexity, and might well exceed the boundaries of our judicial authority and trespass into legislative territory."

This Court in *Slochower v. Bd. of Higher Education*, 350 U. S. 551 (1966) held that to summarily discharge a municipal employee who had invoked his constitutional right against self incrimination was not permitted. This Court did not say that an employee could not be terminated when it was not being done for constitutionally impermissible reasons.

This Court denied certiorari in *Jones v. Hopper*, 410 F.2d 1323 (10th Cir. 1969), cert. denied 90 S.Ct. 1111 (1970). In that case a college professor alleged in a Civil Rights Act complaint that the Board of Trustees of Southern Colorado State College had denied him a right of expectancy of employment because he had sought to exercise his rights of speech, publication and religion, in that the Board had refused to reappoint him after his term of employment had expired. There the Tenth Circuit said: "We believe the appellees herein were exercising a discretion given them by the power vested under the Colorado statute . . . (power to contract and fail to renew contracts of employees). The exercise of this discretion cannot, under the facts alleged in the complaint become unlawful conduct which would justify its falling within the ambit of the Civil Rights Act"

"It would be intolerable for the Courts to interject themselves and to require an educational institution to hire or to maintain on its staff a professor or instructor whom it deemed undesirable and did not wish to employ. For the Courts to impose such a requirement would be an interference with the operation of institutions of higher learning contrary to established principles of law and to the best traditions of education." 410 F.2d at 1326.

This Court again denied certiorari in *Johnson v. Branch*, 364 F.2d 177 (4th Cir. 1966), cert. denied 385 U. S. 1003, 87 S.Ct. 706 (1967). There it was decided by the Fourth Circuit that where teachers contracts are for one year only and renewable in the discretion of the school authorities, the District Court is not to infringe upon this discretionary power but rather is to be

concerned only with whether or not such power is used based on impermissible constitutional grounds.

This Court again denied certiorari in *Freeman v. Gould Special School District*, 405 F.2d 1153 (8th Cir.) cert. denied 396 U. S. 843 (1969). In this case it was decided that due process of law only requires that a teacher's termination not be for constitutional impermissible reasons. (See also *Parker v. Board of Educ.*, 348 F.2d 464, affirming 237 F.Supp. 222 (D.Md. 1965) cert. denied, 382 U. S. 1030).

As was stated by the First Circuit in the instant case it is not claimed by Petitioner that her collateral constitutional rights were violated, ". . . she merely says that the process by which the decision not to rehire her was made does not comport with the fundamental fairness guaranteed her by the Fourteenth Amendment."

From 1966 to date this Court has denied certiorari for good and sufficient reasons. This Court has been consistent in its approach to this type of case.

The process by which the change sought by Petitioner is to be achieved is not through the Courts. If it is to be achieved at all, it is through the legislative halls and in collective bargaining. Indeed the Portsmouth Teachers Association has a master agreement with the Portsmouth School Board and had one when the current case arose. Article VI defines grievance and sets the grievance procedures. Excluded from the grievance procedure by agreement is any complaint of a non-tenure teacher which arises by reason of his not being re-employed. (See Appendix B)

Governmental units, federal state, county and municipal, employ an ever increasing number of persons most every one of whom goes through a probationary period. If the eight step plan sought for temporary teachers is to be mandated or "engrafted into educational administration" by the Courts then it, per force, is to be engrafted into all forms of governmental administration. (See footnote 1 *Drown v. Portsmouth* F.2d (1st Cir. 1970). *(Midoff v. Freeman*, 362 F.2d 472 (1st Cir. 1966) holding no hearing was required to guarantee due process to a dismissed probationary government employee who had been informed of the reasons for his dismissal.)

CONCLUSION

For the foregoing reasons, this Court should not grant the

petition for a writ of certiorari.

Respectfully submitted,

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Attorney for Respondents

Dated: April 1971

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 7695

BRYCE BEATTIE,
PLAINTIFF, APPELLANT,

v.

FRANCES W. ROBERTS, et al.,
DEFENDANTS, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

Before Aldrich, *Chief Judge*,
McEntee and Coffin, *Circuit Judges*.

Charles P. Barnes II, with whom *James R. Flaker* and *Linnell, Perkins, Thompson, Hinckley & Thaxter* were on brief, for appellant.
Barnett I. Shur, with whom *Wilson, Steinfeld, Murrell & Lane, Henry Steinfeld, Charles A. Lane, Bernstein, Shur, Sawyer & Nelson, Gregory A. Tselikis*, and *George M. Shur* were on brief, for appellees.

January 6, 1971

Coffin, *Circuit Judge*. This case concerns the procedural rights of tenured public school teachers whose employment contracts are not renewed. Plaintiff, a tenured teacher, taught for five years in the Windham, Maine, school system. On November 18, 1969, the Superintending School Committee voted not to renew his contract. The Superintendent of Schools notified plaintiff of the Committee's decision in a letter dated December 13. Plaintiff requested a list of reasons for the Committee's action and a hearing before the Committee. In a letter dated December 31, the Superintendent responded, setting a hearing date for January 21, 1970, and the Committee's counsel furnished a list of reasons on January 14.

On January 21 the Committee met in executive session for the purpose of conducting the requested hearing. Both the

Committee and plaintiff were represented by counsel; witnesses were present; and a stenographer recorded the proceedings. Plaintiff's counsel raised several procedural objections. He protested because the hearing was not public, because the witnesses were sequestered, and because he was denied permission to cross-examine members of the Committee. The Committee refused to sustain any of these objections, and plaintiff declined to participate further in the proceedings. The merits of the list of reasons were never reached; the Committee's initial decision not to reemploy plaintiff remained in effect. Plaintiff brings this action, under 42 U.S.C. § 1983 against the Superintendent and the members of the School Committee alleging that he was denied due process. Summary judgement was entered by the district court after a finding that the Committee had afforded plaintiff procedural due process and that plaintiff had failed to exhaust his administrative remedies. From that decision, plaintiff appeals.

Initially, we are confronted with the question of exhaustion of administrative remedies: can plaintiff bring this action, having refused to participate in the January 21 hearing? This court has recently indicated that plaintiffs who bring § 1983 actions must normally exhaust available administrative remedies. *Dunham v. Crosby*, — F.2d — , — n. 2 (1st Cir. Dec. 18, 1970); *Drown v. Portsmouth School District*, — F.2d — , — n. 10 (1st Cir. Dec. 18, 1970). We require exhaustion, in part, because we hesitate to hold members of school committees liable for tentative dismissal decisions when they are denied the opportunity to view the issue in the light of the facts and argument which the affected teachers might introduce in a formal hearing. Plaintiff argues, however, that the procedure followed by the Committee in considering his case was not the procedure required by state statute. Having recently held that § 1983 defendants who short circuit a plaintiff's statutory procedural rights cannot assert the defense of failure to exhaust administrative remedies, *Dunham v. Crosby, supra*, we must consider plaintiff's statutory argument.

A tenured teacher's procedural rights are set forth in 20 Me. Rev. Stat. Ann. § 161(5):

> "After a probationary period of 3 years, any teacher, who receives notice in accordance with this section i.e., at least 6

months before the terminal date of the contract] that his contract is not going to be renewed, may during the 15 days following such notification request a hearing with the school committee or governing board. He may request reasons. The hearing shall be private except by mutual consent and except that either or both parties may be represented by counsel. Such hearing must be granted within 30 days of the receipt of the teacher's request."

Plaintiff presently asserts that the Committee violated this procedure in two ways. First, he reads the statute to require the Superintendent to notify a teacher before he recommends to the Committee that the teacher's contract not be renewed. According to plaintiff's theory, the teacher would then be afforded the opportunity to request the Superintendent's reasons for so recommending and a hearing before the entire Committee. If he requested such a hearing, the Committee would initially consider the issue of his non-renewal at the date of the hearing: presumably it would be improper for the Committee to consider dismissing a teacher even preliminarily if the teacher were not present.

We see no basis in the above statute for plaintiff's interpretation. Under the statute, a teacher is entitled to notice "that his contract is not going to be renewed . . .", not notice that the Superintendent has recommended non- renewal. The language contemplates action by the entire Committee before the teacher is notified. Moreover, plaintiff's interpretation assumes that there is no occasion for the Committee itself to initiate a dismissal, yet the Committee is expressly granted the power to initiate a dismissal under the Maine statute. 20 Me.Rev.Stat.Ann. § 472(4).

Plaintiff says, secondly, that he was not given an adequate statement of the Committee's reasons as required by the statute. He protests that the list of reasons came from the Committee's attorney and not from the Committee. Plaintiff's claim that the Committee must furnish its reasons before it holds a hearing is inconsistent with the interpretation of the statute urged in his first argument. The Committee could not furnish its reasons before the hearing unless it had previously considered the matter. The statute says only that the teacher has the right to "reasons", but we assume the requirement is designed primarily to assist the teacher in preparing for the

hearing before the Committee. In this case, the Committee's attorney submitted to plaintiff a detailed list of 17 incidents which underlay the Committee's November 18 action. The same attorney instructed the members of the Committee at the January 21 hearing that they were to consider only those reasons on the list. Plaintiff was clearly put on notice of the charges against him. Although the Committee preferred to characterize the list as a list of unproven charges rather than reasons, that fact did not prejudice plaintiff in any way; indeed, regarding the list as charges to be proven instead of reasons to be rebutted may have eased plaintiff's burden of proof and should have eased his mind of the matter initially discussed, namely, that the Committee had prejudged its case.

Nor are we able to attach material significance to the fact that two of the events included in the list of reasons occurred after the November 18 meeting when the Committee voted to dismiss plaintiff. We see no reason why the Committee should have ignored incidents occurring after November 18 as long as plaintiff was put on notice before the January 21 hearing of all such events the Committee would consider. The Committee could have considered those incidents, after November 18, which indicated a continuing course of improper conduct.

In fact, the Committee may have afforded plaintiff more procedural protection than he was entitled to under the statute. For example, a stenographic record of the January 21 hearing was kept. Under these circumstances, we see no justification for plaintiff's refusal to follow the proceedings through to the end.

Alternatively, plaintiff claims that the procedure was constitutionally objectionable. He argues that due process requires a completely neutral decision-maker at the hearing and that the Committee, having already made an initial decision not to renew plaintiff's contract, was not impartial. This contention is raised for the first time on appeal. At no point before or during the aborted hearing before the Committee did plaintiff suggest that it was constitutionally incompetent. His sole efforts were to achieve a public hearing, the non-sequestration of witnesses, and cross-examination of Committee members. The complaint similarly addressed alleged procedural deficiencies, not only excluding any complaint as to the incompetence of the Committee, but, as in the instance of charging its refusal to

conduct a public hearing, at least in substantial part inconsistent with any claim of incompetency. Of even greater pertinence is the fact that at no point does the record show that this matter was argued or even alluded to before the district court. After full oral argument was had and after the court read the transcript of the Committee hearing, the court accompanied its bench ruling on defendants' motion to dismiss with a summary of plaintiff's contentions–the three we have noted above–and the applicable law. On concluding, the court inquired of counsel if there were any misstatements. Plaintiff's counsel then called the court's attention to its omission of a fourth contention: that the Committee had refused to state whether it adopted any or all of the reasons contained in the January 14 letter of the Committee's counsel. The court responded and the hearing concluded.

Notwithstanding the obvious inappropriateness of considering an issue neither pleaded not argued below, which was never called to the district court's attention, *see e.g., Hap Corp. v. Heyman Mfg. Co.*, 361 F.2d 329, 331 n. 3 (1st Cir. 1966), we might on rare occasion consider it if the facts pleaded, proven, or sworn to clearly pointed to a blatant and clear deprivation of constitutional rights. This, however, is not such a case. Such law as exists on the constitutional requirement and definition of an "impartial tribunal" in cases of teacher dismissals is varied and murky. The policy implications are vast.

We have recently recognized that a determination of what procedures afforded dismissed teachers due process requires a complex balancing of interests. *Drown v. Portsmouth School District*, F.2d (1st Cir. Dec. 18, 1970). In *Drown* we considered the dismissal of a non-tenured teacher, but we have not yet confronted a case involving a tenured teacher. There is some authority for plaintiff's propositon, *Pickering v. Board of Education*, 391 U.S. 563, 578 n.2 (1968). (dictum), but we note that no court has required a school system to create the procedure plaintiff seeks.*

* There is, however, some case law to the effect that due process requires an impartial tribunal. *E.g., Ferguson v. Thomas,* 430 F2d 852, 856 (5th Cir. 1970); *Wasson v. Trowbridge,* 382 F.2d 807, 813 (2d Cir. 1967); *Esteban v. Central Missouri State College,* 277 F. Supp. 649, 651 (W.D. Mo. 1967). Some of these cases concern the expulsion of college students for disciplinary reasons where the interests to be balanced are different—perhaps materially different—from this case. *E.g., Wasson, supra; Esteban, supra.* On the other hand, some cases concerning the procedural rights of dismissed teachers are silent on the nature of the tribunal. *E.g., Roth v. Board of Regents,* 310 F. Supp. 972 (W.D. Wisc. 1970); *Lucia v. Duggan,* 303 F. Supp. 112 (D. Mass. 1969) (both cited with approval by plaintiff). In none of these cases is there any discussion of what is meant by an "impartial tribunal". Must an impartial tribunal have had no previous contact with the case, as plaintiff urges, or is a tribunal impartial if none of its members are personally interested in the outcome, *cf. Pangburn v. C.A.B.,* 311 F.2d 349, 356-58 (1st Cir. 1962)? *See generally* Wright, *The Constitution on the Campus,* 22 Vanderbilt L. Rev. 1027, 1080-81 (1969).

We see serious problems with this procedure because it would either prevent a Committee from initiating a dismissal or permit it to initiate a dismissal but then require another body of neutral outsiders to review personnel decisions that are properly the responsibility of the Committee. *See Drown, supra* at—. A requirement that the Superintendent serve as prosecutor and bring a proposed dismissal before the Committee for the first time in an adversary proceeding is inconsistent with the Maine statute authorizing the Committee to initiate dismissals. 20 Me.Rev.Stat.Ann. § 472(4). There would still be no guarantee that the Committee would not already have learned of the case in carrying out its duties. The separation of function might well be only facial and insubstantial. There would also be a greater chance of an unwise initial decision to dismiss because only one man, as opposed to the entire School Committee, would have been involved. If we require the state or municipalities to create neutral bodies to which the Committee's decision to dismiss could be appealed, we would be engrafting into educational administration an appellate layer of enormous complexity, and might well exceed the boundaries of our judicial authority and trespass into legislative territory.

Furthermore, plaintiff's dual failures to exhaust his administrative remedies and to present the issue to the district court have foreclosed any analysis of the workings of the present Maine procedures, an exploration we would deem essential to any sensible balancing of the interests of tenured teachers and school committees.

Affirmed.

APPENDIX B

AGREEMENT

BETWEEN THE

PORTSMOUTH BOARD OF EDUCATION

AND THE

PORTSMOUTH TEACHERS ASSOCIATION

July, 1969

Through

June 30, 1970

PORTSMOUTH BOARD OF EDUCATION

ADMINISTRATIVE STAFF

CONSULTANTS
Robert E. Murray, Esquire
LABOR RELATIONS CONSULTANT
METZLER ASSOCIATES

PORTSMOUTH TEACHERS ASSOCIATION

Negotiating Committee

Alvin Taylor, Esquire
Attorney

The Portsmouth, New Hampshire, Board of Education (referred to hereinafter as the "BOARD") and the Association of Portsmouth Teachers (referred to hereinafter as the "ASSOCIATION") agree as follows:

ARTICLE I

RECOGNITION

For purposes of collective negotiations the BOARD recognizes the ASSOCIATION as the exclusive representative of all professional employees of the Portsmouth School System. Professional employees shall include any individual employed by the Portsmouth School System, the qualifications for whose position are such as to require him to hold an appropriate credential issued by the State Board of Education under its regulations governing the certification of professional school personnel, EXCEPT that the term does not include superintendents, assistant superintendents, principals, assistant principals, directors, business administrators, or persons employed by the State Board of Education. The ASSOCIATION agrees to represent all such professional employees in the unit designated above without discrimination and without regard to membership in the ASSOCIATION.

ARTICLE II

NEGOTIATION PROCEDURE

A. 1. Not later than September 8th of each year, the parties agree to enter into negotiations, in accordance with the procedures set forth herein, in a good-faith effort to reach agreement on all matters raised by either party, concerning salaries and fringe benefits. Any agreement reached shall be reduced to writing and signed by the BOARD and the ASSOCIATION. Any agreement reached which requires the expenditure of public funds for its implementation shall not be binding upon the BOARD, unless, and until, the necessary appropriations have been made by the City Council. The Board shall make a good-faith effort to secure the funds necessary to implement said agreements. If such funds are not forthcoming, the BOARD and the ASSOCIATION shall resume negotiations, regarding the matters affected thereby, in accordance with the provisions of this Agreement.

2. The BOARD will make known to the ASSOCIATION

when and where information is available which the BOARD is required by law to release to the general public. Either party, may, if it so desires, utilize the services of outside consultants and may call upon professional representatives to assist in the negotiations.

B. 1. If by October 1st, the parties fail to reach agreement on any matter or matters which are the subject of negotiation, either party may declare an impasse. In the event of an impasse, either party may request the appointment of a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable.

Joseph Wildebush of New York, N. Y., shall serve as mediator under this agreement. If for any reason it is impossible for Joseph Wildebush to serve as mediator the parties will attempt to select an alternate and if not possible then the parties will select a mediator from a panel presented by the American Arbitration Association. The mediator will meet with the parties or their representatives, or both, forthwith, either jointly or separately, and will take such other steps as he may deem appropriate, in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement. If the dispute is not resolved prior to October 31st the mediator shall make findings of fact and recommend terms of settlement regarding the disputed materials submitted to him. Said recommendations will be advisory only and shall be made within thirty-one (31) days of his appointment. Either the BOARD or the ASSOCIATION may make such findings and recommendations public, if no agreement is reached within ten (10) days after their receipt from the mediator. The costs for the services of the mediator, including per diem expenses, if any, and actual and necessary travel and subsistence expenses, will be shared equally by the BOARD and the ASSOCIATION.

ARTICLE III

RESIGNATIONS

It is agreed that any teacher's right to resign shall not extend beyond August 1st, and the terms of the individual contracts on the subject of resignations shall prevail. The ASSOCIATION agrees to make every reasonable effort to encourage its members to comply with this Article.

ARTICLE IV

MISCELLANEOUS

A. The BOARD agrees not to negotiate with any teacher's group or organization other than the designated unit in regard to any matter subject to negotiation under Article II, Paragraph A of this Agreement as long as the ASSOCIATION shall represent a majority of the professional employees of the Portsmouth School System. Provided, however, that this shall not prevent the BOARD from communicating or consulting with any individual teacher or group of teachers for any purpose the BOARD shall deem desirable in the discharge of its responsibilities, nor shall it preclude any teacher from appearing before the BOARD in his own behalf on matters relating to employment by the BOARD.

B. The parties understand that neither the BOARD nor the Superintendent may lawfully delegate the power or authority which, by law, are vested in them, and this Agreement shall not be construed so as to constitute a delegation of said power or authority.

C. This Agreement may not be modified, in whole or in part, by the parties, except by an instrument in writing, duly executed by both parties.

D. If the parties disagree as to the meaning or interpretation of any of the provisions of this Agreement, either party may utilize the grievance procedure set forth in Article VI, in order to resolve said dispute.

ARTICLE V

DURATION

The provisions of this Agreement will be effective as of July 29, 1969 except as otherwise herein provided, and will continue and remain in full force and effect until June 30, 1970, and will automatically renew itself thereafter for successive terms of one (1) year each, unless, by September 15th next, prior to expiration of the contract year, either the BOARD or the ASSOCIATION gives written notice to the other of its desire to modify or terminate this Agreement.

ARTICLE VI

GRIEVANCE PROCEDURE

Definition:

A "Grievance" shall mean a complaint by an employee of the Public School System that there has been to him a personal loss, injury or inconvenience because of a violation, misinterpretation or inequitable application of an established agreement governing employees except that the term "grievance" shall not apply to (a) any matter for which a specific method of review is prescribed by law or (b) any rule or regulation of the State Commissioner of Education or (c) any by-law of the Board of Education pertaining to its internal organization or (d) any matter which according to law is either beyond the scope of the Board authority or limited to unilateral action by the Board alone (e) a complaint of a non-tenure teacher which arises by reason of his not being re-employed (f) or a complaint by any certificated personnel occasioned by appointment to or lack of appointment to, retention in or lack of retention in any position for which tenure is either not possible or not required. A grievance to be considered under this procedure must be initiated by the employee within thirty (30)calendar days of its occurence, or within thirty (30) calendar days of when the employee should have known of its occurence.

Procedure:

1. (a) Failure at any step of this procedure to communicate the decision on a grievance within the specified time limits shall permit the aggrieved employee to proceed to the next step. Failure at any step of this procedure to appeal a grievance to the next step within the specified time limits shall be deemed to be acceptance of the decision rendered at that step.

   (b) It is understood that employees shall, during and notwithstanding the pendency of any grievance, continue to observe all assignments and applicable rules and regulations of the Board until such grievance and any effect thereof shall have been fully determined.

2. Any employee who has a grievance shall discuss it first with his Principal (or immediate superior or department head, if

applicable) in an attempt to resolve the matter informally at that level.

3. If as a result of the discussion, the matter is not resolved to the satisfaction of the employee within five (5) school days, he shall set froth his grievance in writing to the Principal specifying:

(a) The nature of the grievance and date occured.
(b) The nature and extend of the injury, loss or inconvenience.
(c) The results of previous discussions.
(d) His dissatisfaction with decisions previously rendered.

The Principal shall communicate his decision to the employee in writing within three (3) school days of receipt of the written grievance.

4. The employee, no later than five (5) school days after receipt of the Principal's decision, may appeal the Principal's decision to the Superintendent of Schools. The appeal to the Superintendent must be made in writing reciting the matter submitted to the Principal as specified above and his or her dissatisfaction with decisions previously rendered. The Superintendent shall meet with the employee to attempt to resolve the matter as quickly as possible but within a period not to exceed ten (10) school days. The Superintendent shall communicate his decision in writing to the employee and the Principal.

5. If the grievance is not resolved to the employee's satisfaction, he no later than five (5) school days after receipt of the Superintendent's decision may request a review by the Board of Education. The request shall be submitted in writing through the Superintendent of Schools who shall attach all related papers and forward the request to the Board of Education. The Board, or a committee thereof, shall review the grievance and shall, at the option of the Board, hold a hearing with the employee and render a decision in writing within thirty (30) calendar days of receipt of the grievance by the Board or of the hearing with the employee, whichever comes later.

6. If the decision of the Board does not resolve the grievance to the satisfaction of the employee grievant and he wishes review by a third party, he shall so notify the Association within ten (10) school days of receipt of the

Board's decision. If the Association determines that the matter should be reviewed further, it shall so advise the Board through the Superintendent within twenty (20) school days of receipt of the Board's decision. The Board will refer the matter to Mr. Steven McClosky or his designee, who will serve as arbitrator.

7. (a) The arbitrator shall limit himself to the issues submitted to him and shall consider nothing else. He can add nothing to, nor subtract anything from the Agreement between the parties. The recommendations of the arbitrator shall be advisory only.

(b) Rights of Teachers to Representation

(1) Any aggrieved person may be represented at all stages of the grievance procedure by himself, or, at his option, by the Association by a representative selected or approved by the Association.

(c) (2) When a teacher is not represented by the Association in processing of a grievance, the Association shall at the time of submission of the grievance to the Superintendent or any later level, be notified by the Superintendent that the grievance is in process and has the right to be present and present its position in writing at all hearings and sessions held concerning the grievance and shall reeeive a copy of all decisions rendered.

(3) The Board and the Association shall assure the individual freedom from restraint, interference, coercion, discrimination or reprisal in presenting his appeal with respect to his personal grievances.

B. Costs

1. Each party will bear the total cost incurred by themselves.

2. The fees and expenses of the arbitrator are the only costs which will be shared by the two parties and such costs will be shared equally.

ARTICLE VII

EXTENDED LEAVES OF ABSENCE

A. Military leave, without pay, of up to two (2) years will

be granted to any teacher who is inducted or enlists in any branch of the Armed Forces of the United States. Upon return from such leave, a teacher will be placed on the salary schedule at the level which he would have achieved had he remained actively employed in the system during the period of his absence.

B. Maternity leave for teachers on continuing contracts of one (1) school year will be granted, without pay or other benefits. A teacher who becomes pregnant shall notify the Superintendent in writing as soon as pregnancy has definitely been determined. Continued employment will, normally, be possible until the end of the fifth (5th.) month of pregnancy. However, if the teacher's physical condition warrants it, the Superintendent may require earlier termination of her employment under this section. The teacher on maternity leave must notify the Superintendent in writing of her intention to return to her position by May 1 next, preceding the beginning of the school year.

C. Other leaves of absence, without pay, may be granted at the discretion of the BOARD.

D. All benefits to which a teacher was entitled at the time his leave of absence commenced, including unused accumulated sick leave, will be restored to him upon his return, and he will be assigned to the same position which he held at the time said leave commenced, if available, or a substantially equivalent position for which he is certified as soon as said position becomes available.

E. In the case of leaves granted under Section A, B, or C, such teacher shall, after notifying the Superintendent in writing of her availability to return to teaching be assigned to the same position which she held at the commencement of such leave, when, and if, a vacancy occurs in such position.

F. Leaves of absence granted under this Article shall be for a minimum period of one (1) year, except when otherwise ordered by the Board.

G. All requests for extensions or renewals of leaves will be applied for in writing and if granted the teacher will be notified in writing.

ARTICLE VIII

DUES DEDUCTION

A. The Board agrees to deduct from the salaries of its employees dues for the Association of Portsmouth Teachers, the New Hampshire Education Association and/or The National Education Association, or any one (1) of such associations, as said teachers individually and voluntarily authorize the Board to deduct and to transmit the monies promptly to such Association or Associations.

ARTICLE IX

SICK LEAVE

Teachers will be entitled to ten (10) sick leave days each school year, as of the first official day of said school year. Sick leave days may be accumulated from year to year, with a maximum limit of one hundred and twenty (120) days.

ARTICLE X

TEMPORARY LEAVES OF ABSENCE

Teachers will be entitled to the following temporary leaves of absence, with full pay each school year.

A. Individual leave may be granted to teachers by the administration for various reasons during the contract year.

B. The total number of days that can be granted for an individual teacher during any one school year is not to exceed five (5) days.

C. Each teacher shall be entitled to the allowance of full salary for these days providing that the policies of the Portsmouth Board of Education for individual leaves are met.

D. The five (5) individual leave days are not cumulative from one year to another.

E. Provisions:

1. Leave will be granted for the death of a member of their immediate family. Members of the immediate family include.

(a) Parents
(b) Husband
(c) Wife
(d) Son
(e) Daughter
(f) Sister
(g) Brother
(h) Parental-in-laws
(i) Brother-in-law
(j) Sister-in-law

2. Personal business that cannot be transacted at any other reasonable time may be considered for individual leave. This day should not occur just prior to, or following school holidays or vacations.

3. Attendance at graduation ceremonies for son, daughter or spouse will be considered for individual leave up to a maximum of two (2) days per school year.

ARTICLE XI

SABBATICAL LEAVES

Upon recommendation by the Superintendent of Schools, sabbatical leaves may be granted to members of the teaching staff by the Board for study, including study in another area of specialization, subject to the following conditions:

1. The teacher has completed at least seven (7) consecutive full school years of service in the Portsmouth School System.

2. Sabbatical leaves may be for a full or a half of a year. If leave is for a full year or a half year the teacher will be paid by the Board at fifty per cent (50%) of the salary rate he would have received had he remained on active duty.

3. Request for sabbatical leave must be received by the Superintendent of Schools in writing, in such form as may be required by the Superintendent, no later than November 15 of the year preceding the school year for which the sabbatical leave is requested.

4. Each teacher must agree to return to service in the Portsmouth Public Schools immediately upon termination of sabbatical leave and to continue in such service for a period of two (2) years, unless physical disability makes this impossible or there is mutual agreement to the contrary.

ARTICLE XII

SALARIES

A. The salary scale of all professional employees is set forth in appendix attached hereto and made a part hereof.

B. The salaries shall be payable in equal installments every other Friday throughout the school year, beginning on the second Friday after Labor Day, unless Friday is a legal holiday, payment will be made on the following Monday. The remainder of that year's salary shall be paid to each teacher on the last day of school in June.

ARTICLE XIII

INSURANCE

The Board shall provide each teacher with Blue-Cross Blue-Shield benefits by paying 100% of a single membership for each teacher not to exceed the sum of $114.00 during the year 1970-1971.

ARTICLE XIV

ASSOCIATION PRIVILEGES

A. There will be no reprisals of any kind taken against any teacher by reason of his membership in the Association or participation in its lawful activities.

B. The Board will, upon request, make known to the Association when and where information is available, such information as the Board is required to release to the general public.

C. The Executive Committee of the Association will have the right to place notices, circulars and other material in teachers' mailboxes, provided that such materials shall not relate to local, state or national political matters. Copies of all such material will be given to the Building Principal and the Superintendent in advance but their approval will not be required.

ARTICLE XV

GENERAL

A. If any provisions of this Agreement or any application

of the Agreement to any employee or group of employees shall be found contrary to law, then such provision or application shall not be deemed valid and subsisting except to the extent permitted by law, but all other provisions or applications will continue in full force and effect.

B. Copies of this Agreement will be provided at Board expense and a copy given to each teacher by the opening of school in September.

ARTICLE XVI

OTHER AREAS OF CONCERN

This agreement does not preclude the continuance of discussion and negotiation on the subjects of teaching hours and load, teacher employment, teacher assignment, teacher evaluation, vacancies and promotions and other areas of concern and when and if, agreement is reached on said issues they may be appended to this agreement and shall become a part hereof by reference.

Salary Schedule
Effective - September, 1970

Degree

Steps	1969-70	1970-71
1	$ 6000	$ 6300
2	6360	6678
3	6720	7056
4	7080	7434
5	7440	7812
6	7800	8190
7	8160	8568
8	8520	8946
9	8880	9324
10	9240	9702
11	9600	10,280

No-Degree

Steps	1969-70	1970-71
1	$ 5050	$ 5303
2	5150	5408
3	5250	5513
4	5350	5618
5	5500	5775
6	5650	5933
7	5800	6090
8	5950	6248
9	6100	6405
10	6250	6563
11	6350	6668
12	6550	6878

Special No-Degree Industrial Arts & Nurses

Steps	1969-70	1970-71
1	$ 5000	$ 5250
2	5200	5460
3	5400	5670
4	5600	5880
5	5800	6090
6	6000	6300
7	6200	6510
8	6400	6720
9	6600	6930
10	6800	7140
11	7000	7350
12	7200	7560

Fringe Benefits

1. Full payment of individual membership in Blue Cross/Blue Shield or those teachers who wish it.
2. Payment of the cost up to $40.00 per credit hour for course work, up to six credits per year.
3. Sick leave of 10 days per year accumulative to 120 days.
4. Longevity

20 years experience	$150.00
25 years experience	$300.00

Increments for credits beyond the Bachelor's Degree

	1969-70	1970-71
Bachelor's plus 15 credits	$ 200	$ 250
Master's Degree	600	700
Master's Degree plus 15 credits	800	1,000
Master's Degree plus 30 credits	1,000	1,200
Department Heads		
Senior High School	600	800
Junior High School	300	400

The Directors' salary shall be 6.5 percent increase over the past year's total contract salary and they shall receive all the fringe benefits granted to the teachers.

Those principals working on a 10-month basis per year shall receive 7.5% increase over the past year's total contract salary and those principals working on an 11-month basis per year shall receive 10% increase over the past year's total contract salary. These principals shall receive all the fringe benefits granted to the teachers.

Coaches

Football	1969-70	1970-71
Varisty - Head Coach	$1500	$1500
Varsity - Asst. Coach	800	800
J.V. - Head Coach	700	700
J.V. - Asst. Coach	600	600
Freshman Coach	500	500
Freshman Asst.	300	300

Basketball	1969-70	1970-71
Varsity - Head Coach	$ 1500	$ 1500
J.V. Coach	800	800
Freshman Coach	500	500
Sr. High "B" Team	300	300
Jr. High Varsity	500	500
Jr. High "B" Team	300	300
Baseball		
Varsity - Head Coach	1000	1000
J.V. Coach	500	500
Freshman Coach	400	400
Jr. High Coach	300	300
Track (3 seasons)		
Varsity Coach	1500	1500
Asst. Coach	800	800
Soccer		
Varsity Coach	500	500
Asst. Coach	300	300
Hockey		
Varsity Coach	300	300
Golf		
Varsity Coach	300	300
Tennis		
Varsity Coach	300	300
Cheerleading		
Varsity Coach	400	400
Girls' Varsity Sports		
Field Hockey	200	200
Ski Team	200	200
Track	200	200

Bowling (Girls & Boys)	**1969-70**	**1970-71**
Senior High	$ 200	$ 200
Intramurals		
Boys		
4 nights per week	400	400
2 nights per week	200	200
Girls		
4 nights per week	400	400
2 nights per week	200	200
Supervision of students in skiing and swimming intramurals	$2.50 per hr.	$2.50 per hr.
Other Administrative or Supervisory Positions		
Elementary Supervisors		
(Art, Music, Physical Edu.)	500	500
Reading Coordinator	500	500
Guidance Counselors	500	500
Early Arrivals	180	180
Stage - Junior High	200	200
Debating	300	300
Audio-Visuals	500	500
Photography	400	400
Year Book	500	500
Dramatics	500	500
Assistant	200	200
Elementary Band	300	300
Newspaper	100	100